

UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF NEW YORK

Case Nos. 08-13555(JMP)

Adv. Case Nos. 09-01262, 09-01115

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In the Matter of:

LEHMAN BROTHERS HOLDINGS, INC., et al.,

Debtors.

- - - - -x

In the Matter of:

LEHMAN BROTHERS INC.,

Debtor.

- - - - -x

EUROPEAN CREDIT MANAGEMENT LIMITED, et al,

Plaintiffs,

-against-

LEHMAN COMMERCIAL PAPER INC.,

Defendants.

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MILLENNIUM INTERNATIONAL, LTD.,  
Plaintiffs,  
-against-  
LEHMAN BROTHERS FINANCE, S.A., et al.  
Defendants.  
- - - - -x

U.S. Bankruptcy Court  
One Bowling Green  
New York, New York  
  
August 5, 2009  
2:04 p.m.

B E F O R E:  
HON. JAMES M. PECK  
U.S. BANKRUPTCY JUDGE

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ADV. CASE NO. 09-01262

PRE-TRIAL CONFERENCE IN EUROPEAN CREDIT MANAGEMENT LIMITED, ET  
AL v. LCPI

ADV. CASE NO. 09-01115

PRE-TRIAL CONFERENCE MILLENNIUM INTERNATIONAL, LTD., v. LEHMAN  
BROTHERS FINANCE, S.A.

Transcribed by: Ellen S. Kolman

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1 P R O C E E D I N G S

2 THE COURT: Please be seated. This is the adversary  
3 proceeding phase of the Lehman omnibus day. The first case on  
4 my list is European Credit Management. Are you all here?

5 MR. LEVINE: Yes, Your Honor.

6 MR. JURELLER: Yes, we are, Your Honor.

7 THE COURT: What's the story?

8 MR. JURELLER: Want me to start off? Good afternoon,  
9 Your Honor. John Jureller from Klestadt & Winters and Tracy  
10 Klestadt, as well, on behalf of the plaintiffs. We've reached  
11 a stipulation as to the discovery schedule which we have and we  
12 can submit to the Court. I can go over some of the facts of  
13 the case, if you'd like. I'm not sure how you want to proceed.

14 THE COURT: I've looked at the basic pleadings. What  
15 kind of discovery do you need and how much time are you  
16 scheduling for it?

17 MR. JURELLER: The scheduling is -- goes out a little  
18 ways. It's my understanding through Lehman Brothers that  
19 there's a process, and maybe Mr. Levine can actually go forth  
20 explain it in more detail, there's a process where it's going  
21 to take four to five months just to get some of these documents  
22 through LBIE and the United Kingdom. So we've put out  
23 discovery where all documents have to be produced before  
24 January 29th. However, the discovery's going to be --

25 THE COURT: That's 2010?

1 MR. JURELLER: I'm sorry?

2 THE COURT: That's 2010.

3 MR. JURELLER: In 2010, that's correct. But the  
4 discovery is going to be on a rolling basis so that as the  
5 documents come in, they're not going to be held by the parties  
6 until that date. They're going to be provided within a  
7 reasonable time after they're in receipt. Now, the whole  
8 reason, again, is because of this whole U.K. system, again.

9 THE COURT: You're going to have to --

10 MR. JURELLER: I don't know the details on that.

11 THE COURT: -- you're going to have to explain this  
12 to me because it seems like it's an extraordinarily prolonged  
13 period for document discovery.

14 MR. LEVINE: Understood, Your Honor. The problem is  
15 that the IT infrastructure, which holds all the e-mails, is now  
16 owned by Nomura. Access to those e-mails is -- has to go  
17 through the European entities under the administration of PwC.  
18 And PwC -- I've been working with them indirectly through  
19 people in London on several other contested matters and they  
20 take four to five months to get us documents back.

21 THE COURT: Is that because it actually takes that  
22 much time or because they prefer to drag their feet on this?

23 MR. LEVINE: I don't know the answer. But I suspect  
24 it's foot-dragging. I know that people from Alvarez & Marsal,  
25 the financial advisors to the debtors, have had numerous

1 meetings with PwC to try to press this issue so far, not  
2 without great success. There have been a lot --

3 THE COURT: I'm going to give you -- I don't mean to  
4 make your lives any more difficult than they already are, but I  
5 am actually not inclined to acquiesce in a schedule that's  
6 unreasonable because other parties not identified and not  
7 subject to the jurisdiction of this Court are, I'm going to use  
8 your words picking up my words and I don't know if it's true or  
9 not, possibly foot-dragging and creating unnecessary delay that  
10 is also adding to the expense and burden on case administration  
11 here.

12 So what I'm going to ask you to do is to shorten the  
13 time to a more reasonable time and use that as a reason for  
14 those parties who are holding the documents to respond by that  
15 deadline or show cause why they can't meet that deadline.

16 MR. LEVINE: Your Honor, that's fine with us.

17 THE COURT: Does that create a problem for you?

18 MR. LEVINE: It gives us some more leverage. We have  
19 been using deadlines in other cases to try to pressure them. I  
20 know there was a meeting this week between PwC and Linklaters,  
21 their counsel, in response to some of the demands that the  
22 debtors here have been putting on them to try to speed things  
23 along. Any leverage you can give us is great. But if they're  
24 not so -- and I know that things --

25 THE COURT: Obviously, we'll extend the time out if



1 you need --

2 MR. LEVINE: Okay.

3 THE COURT: -- more time because they're not  
4 performing as appropriate.

5 MR. LEVINE: Okay. So we will talk about a shorter  
6 period of time and then try to use that as leverage to get the  
7 documents out of London.

8 THE COURT: Perhaps it will help -- whether it helps  
9 or not. I'm simply not inclined to put document discovery out  
10 to January of 2010 because there's a pattern of delay in  
11 getting documents that could, if parties were actually acting  
12 in a cooperative way, be produced in a timely fashion.

13 MR. LEVINE: I hear what you're saying. I do know  
14 that there have been technological problems with Nomura, or at  
15 least that's what's being reported back to the debtors from  
16 PwC.

17 THE COURT: That may be true, but it really sounds  
18 like excuses to me.

19 MR. LEVINE: I'm not in a position nor would I want  
20 to disagree with that, Your Honor. I mean I hear what you're  
21 saying and my gut is the same as yours.

22 THE COURT: Okay. I mean I don't have any evidence  
23 to indicate that it's one way or the other on this but I'm not  
24 inclined to stretch out document discovery unreasonably for  
25 reasons that haven't been fully explained.

1 MR. LEVINE: Okay, Your Honor.

2 MR. JURELLER: On behalf of the plaintiff, we're  
3 obviously more than happy to move more quickly on that.

4 THE COURT: And I figure you would be.

5 MR. LEVINE: Okay. So we'll go back to the drawing  
6 board and try something else, Your Honor.

7 THE COURT: All it really means is that you have less  
8 time to get the documents together and perhaps a need to come  
9 back for further pretrial to stipulate for an extension for  
10 cause show.

11 MR. LEVINE: Okay.

12 THE COURT: Is it contemplated that this is a case  
13 that will lead to dispositive motions or to trial?

14 MR. LEVINE: Your Honor, I think that both sides have  
15 talked about making some fairly early on motions. There are  
16 some -- counsel and I have been discussing, because it's not  
17 clear at this point to counsel exactly what contractual terms  
18 apply to each of the six trays at issue. When that is  
19 clarified, and we're hoping we can clarify that informally,  
20 there may be motion practice if things can't be agreed to. We  
21 may be making motion for judgment on the pleadings. I know  
22 that counsel for the plaintiffs indicate they may, at some  
23 point, be making a motion for preliminary injunctive relief.  
24 Again, a lot of that may be able to be avoided by counsel  
25 working things out and we're trying to do that.

1 And I think at the bottom line, though, that the  
2 ultimate issue will be a legal issue. Whether or not under the  
3 English form of participations, which is different than the  
4 American form, a holder -- a participant in debt held by a  
5 debtor has a right to participate. The way the debtors view it  
6 is that under the American form of contract, the participant  
7 has an equitable and legal interest in the underlying debt and  
8 therefore the debtors have been granting requests by  
9 participants to elevate participations into the primary lender  
10 position. While in the U.K. under the debtors' interpretation  
11 of the contractual terms, all a participant has, vis-a-vis the  
12 debtor, is a debtor/creditor relationship and therefore once  
13 the Chapter 11 was filed, their position was simply as being a  
14 creditor of the debtor with respect to the underlying  
15 transaction. So I think that's a legal issue which sooner or  
16 later unless there's a resolution, will be presented it to Your  
17 Honor and my guess is that it's something that can be presented  
18 by summary judgment as opposed to trial.

19 THE COURT: So do I understand you correctly that  
20 after document discovery has been concluded and after parties  
21 have met and conferred to narrow the issues that it is likely,  
22 or at least you think it is possible, that there'll be a  
23 dispositive issue in which the bankruptcy court sitting in New  
24 York is going to be asked to interpret English law on the  
25 question of the rights of loan participants? Is that right?

1 MR. LEVINE: That is correct, Your Honor.

2 THE COURT: It seems a very strange thing to ask me  
3 to do but I understand that I've done strange things in this  
4 case already.

5 MR. JURELLER: Your Honor, it may go beyond just  
6 English law. We may not even reach that point. It may be an  
7 English contractual dispute, so if maybe the contract terms --  
8 the terms of the contracts just happen to be different under  
9 both American and the U.K.

10 THE COURT: This is an LM ---

11 MR. JURELLER: We may not even get into U.K. law on  
12 that.

13 THE COURT: -- this is an LMA government agreement?

14 MR. LEVINE: Yes, Your Honor.

15 THE COURT: Is there any precedent in any U.S. court  
16 interpreting this? Is there precedent in the U.K. courts  
17 interpreting this?

18 MR. LEVINE: Not to my knowledge, Your Honor. All  
19 I've seen is articles. There are a number of articles out  
20 there which, obviously, don't have any precedential value but  
21 there are some writings on this issue than on the distinction  
22 between the U.S. and the LMA contracts. But I'm not aware  
23 of --

24 THE COURT: Would there be expert -- would there be  
25 expert witnesses involved on either side in order to assist the

1 Court in understanding the nuances of U.K. law versus U.S. law  
2 on this subject?

3 MR. LEVINE: I think that's a very real possibility,  
4 Your Honor. I don't think we're there yet, but I think that's  
5 a very real possibility.

6 THE COURT: All right. Well, it just occurs to me  
7 thinking about this that that would be helpful for the Court.

8 MR. LEVINE: Understood.

9 THE COURT: And, obviously, if the experts all agree,  
10 I assume you'll settle.

11 MR. LEVINE: Fair enough, Your Honor.

12 THE COURT: Okay. Is there more for today?

13 MR. LEVINE: Thank you very much.

14 MR. JURELLER: I think that's it.

15 THE COURT: All right. Thank you.

16 MR. LEVINE: Thank you, Your Honor.

17 THE COURT: You'll submit a stipulation to so order?

18 MR. LEVINE: We will. We'll revise the one that --

19 THE COURT: You'll revise it and submit it. Thank  
20 you.

21 MR. JURELLER: Thank you, Your Honor.

22 THE COURT: Next is Millennium International v.  
23 Lehman Brothers Finance, S.A.

24 (Pause)

25 MR. WELSH: Good morning, Your Honor. Peter Welsh

1 from Ropes & Gray on behalf of Millennium International,  
2 another plaintiff.

3 THE COURT: It's good afternoon.

4 MR. WELSH: Pardon?

5 THE COURT: It's good afternoon.

6 MR. WELSH: Good afternoon, sorry.

7 THE COURT: That's okay.

8 MR. WELSH: Your Honor, this is our first appearance  
9 before the Court and if it would be helpful, I'd be happy to  
10 give a brief overview of the allegations in the adversary  
11 complaint and also provide a status on where the case currently  
12 stands.

13 THE COURT: That's fine.

14 MR. WELSH: The case, Your Honor, involves a swap  
15 contract between Millennium International and LBF. Broadly  
16 speaking, the terms of the swap contract involved Lehman  
17 provide -- LBF providing 75 million dollars in financing and  
18 Millennium International providing 37.5 million dollars in  
19 financing. All of which, the 112.5 million, was invested in  
20 the Millennium International fund. The purpose of the swap was  
21 to provide Millennium on its 37.5 million dollar investment  
22 with a three times levered return on an investment in the  
23 Millennium International fund. The leverage was provided by  
24 LBF in the form of the seventy-five million dollars in  
25 financing. Lehman's return on the seventy-five million dollars

1 was in the form of an accreting strike price that represented  
2 interest effectively on the seventy-five million dollar loan.

3 To hedge Lehman's exposure on the investment,  
4 Millennium issued 112.5 million dollars worth of shares to  
5 Lehman to hold in the Millennium International fund as a hedge  
6 against their exposure on the leverage portion of the deal.

7 In, approximately, May of 2008, LBF contacted  
8 Millennium and asked Millennium's consent to transfer the 112.5  
9 million -- 112,500 shares of the Millennium fund over to KBC.  
10 At that point, the parties discussed the terms of possibly  
11 affecting that transfer. They went back-and-forth a little  
12 bit, never reached agreement on the transfer. And,  
13 importantly, Millennium had the right in its absolute  
14 discretion to consent or not consent to the transfer of the  
15 shares.

16 In September of 2008, Millennium contacted LBF to  
17 inquire about unwinding the swap contract and returning to each  
18 of the parties their respective interest in the swap. At that  
19 point, Millennium was informed by representatives of LBF that  
20 the shares, the 112,500 shares in the Millennium fund had  
21 already been transferred on Millennium's book -- on Lehman's  
22 book, sorry, to KBC and that if Millennium were interested in  
23 unwinding the trade, they would need to bring KBC into the  
24 process. At which point, KBC was brought into the process and  
25 KBC took the position that unless Lehman would formally

1 transfer the shares to KBC at that point, they could do and  
2 would do nothing to unwind the trade. They also represented it  
3 through Lehman and Lehman represented to Millennium that if  
4 Millennium returned -- transferred the shares, rather, to KBC,  
5 KBC would affect it, unwind, of the trade.

6 On September 11th, Millennium affected the transfer  
7 of shares to KBC. On September 12th, representatives at LBF  
8 effectively went radio silent. And on September 15th, of  
9 course, Lehman Brothers Holdings filed for bankruptcy.

10 We've brought this adversary proceeding against both  
11 LBF and against KBC in order to recover only the equity portion  
12 of the swap; the original -- really, the current value of the  
13 original 37,500,000 that was posted by Millennium as part of  
14 the original transaction.

15 The seventy-five million dollars in financing that  
16 was originally provided by LBF, Millennium is willing and has  
17 always been willing to return to the -- whoever the claimant is  
18 on those funds, provided Millennium gets some assurances that  
19 it's not going to face claims by one or another of the parties,  
20 for example, we're paying the funds to the wrong party and as  
21 long as Millennium's claims and defenses in this action are  
22 preserved. And we have been working recently with KBC and LBF  
23 on a stipulation to affect the return of the seventy-five  
24 million dollars that is not contested in this matter. And then  
25 the focus of the matter is on the remaining equity portion, the



1 current value of the 37.5 million that was originally posted by  
2 Millennium in the original swap.

3 On that issue, Your Honor, we have recently had  
4 discussions among the parties as recently as a meeting last  
5 evening and those discussions are proving productive and  
6 progressing. And we're moving as quickly as we can to provide  
7 information to LBF and to KBC and discuss certain open issues  
8 between the parties to try and reach a resolution as soon as  
9 possible assuming it is possible.

10 THE COURT: Based upon that presentation, are you  
11 more in the zone of working toward a consensual business  
12 solution to this dispute or are you expecting that there will  
13 be a need to litigate the remaining issues involving the  
14 thirty-seven and a half million dollars?

15 MR. WELSH: I would say, Your Honor, it's unclear at  
16 this point. I think the recent discussions have been  
17 encouraging. I think there are factors unrelated to litigating  
18 the facts of the case that may affect the possible -- a  
19 possible resolution of the case. And I think our discussions,  
20 again, as recently as last evening with representatives of LBF  
21 and KBC of the issues that would be the subject of litigation  
22 on the case was promising, I think, from our perspective. I'll  
23 let them, certainly, speak for themselves.

24 THE COURT: Let's -- I'll certainly hear from anybody  
25 else who wants to speak to the issue. This is a pre-trial and

1 to the extent that parties can avoid what may turn out in  
2 retrospect to be unnecessary legal effort if something can be  
3 resolved with the exercise of some creativity and hard work,  
4 then maybe we should give creativity and hard work a chance  
5 first, but let's find out what others think about that.

6 MR. WELSH: Thank you, Your Honor.

7 THE COURT: What's the -- what about LBF's position?

8 MS. DE ARCY: Good afternoon, Your Honor. LaShann  
9 DeArcy. I'm with Gibson, Dunn & Crutcher representing LBF. I  
10 believe that Mr. Welsh has properly summed up the facts of the  
11 case. Certainly, there are some discrepancies on some of the  
12 issues. We have been engaged with Millennium for quite some  
13 time in discussions and are hopeful that we will be able to  
14 come to a business resolution. There are some outstanding  
15 issues that we are working on in terms of an effectual matter  
16 which will inform our analysis in terms of whether we can reach  
17 a business resolution. But I think that we are hopeful that we  
18 can and it is our, I think, desire to avoid unnecessary  
19 protracted litigation.

20 THE COURT: Let me just ask a very mundane question  
21 about jurisdiction and decision-making authority. LBF is in  
22 liquidation --

23 MS. DE ARCY: In Switzerland.

24 THE COURT: -- in Switzerland.

25 MS. DE ARCY: Yes.

1 THE COURT: There is a parallel Chapter 15 case here.  
2 The litigation resides within the Chapter 15? Where's the  
3 litigation?

4 MS. DE ARCY: Yes, we have authority -- if you're  
5 asking if we have authority to enter into a settlement here and  
6 notwithstanding the proceedings that are ongoing in  
7 Switzerland, and the answer to that question is yes.

8 THE COURT: So who makes the decision to settle --  
9 who's the business person who does that, and what, if any,  
10 authority is needed from the Court in Switzerland or the  
11 administrative office that supervises the case? If the answer  
12 is there's none needed, that's a good answer if that's the  
13 right answer.

14 MS. DE ARCY: Well, PwC, Your Honor, is the  
15 liquidator/trustee in Switzerland and it is through PwC that we  
16 need to get our business decisions approved. So it is -- we  
17 are not without constraints from PwC, however, we have  
18 discussed this issue with PwC; we've been given the authority  
19 to move forward with business discussions to resolve this  
20 issue, if possible.

21 THE COURT: Okay. Fine. I suppose I should also  
22 hear from, is it KPC?

23 MS. CHEPIGA: Yes, Your Honor. Pamela Chepiga, Allen  
24 & Overy for KBC. Your Honor, in May of 2008, KBC and Lehman  
25 entered into a transaction in which KBC purchased from Lehman

1 over a billion dollar basket of hedge fund securities. We  
2 received full title to all of those securities with no cloud on  
3 any of that title. Included in that hedge fund basket, was the  
4 Millennium shares at issue here, the 112.5 million as to which  
5 we now have ownership of.

6 We put in redemption notices last December for that  
7 amount. And Millennium has refused to pay for that claiming  
8 that there was a dispute between Lehman and Millennium on  
9 whether or not those shares were properly transferred to us.  
10 But we received them as a full faith purchaser for value. And  
11 we are most interested in not being a party to this litigation  
12 and getting our payment back.

13 In -- we have been attempting --

14 THE COURT: When you say, "in getting your payment  
15 back", let me --

16 MS. CHEPIGA: A payment for the shares that we hold  
17 in which we had put a redemption notice in for last December.

18 THE COURT: Okay. Well, let's step back at least one  
19 full pace so I understand something. Your client acquired a  
20 basket, to use your term, of securities. I presume a  
21 miscellaneous basket of securities --

22 MS. CHEPIGA: Yes, Your Honor.

23 THE COURT: -- from LBF.

24 MS. CHEPIGA: Yes.

25 THE COURT: Was LBF the only party with whom you

1       dealt that was a Lehman related entity?

2               MS. CHEPIGA:   Yes.

3               THE COURT:   So that it was -- that was the only  
4       counterparty to your transaction?

5               MS. CHEPIGA:   Yes.

6               THE COURT:   And the transaction included, I assume,  
7       reps and warranties?

8               MS. CHEPIGA:   Yes.

9               THE COURT:   And I presume that all of the conditions  
10       to closing were satisfied and you simply bought whatever it was  
11       that Lehman sold in accordance with the terms of that  
12       administer agreement or a sale agreement, whatever it was.

13              MS. CHEPIGA:   Yes.

14              THE COURT:   And was there a provision for any  
15       modification in the purchase price or any right of recourse as  
16       to the seller, LBF, in the event that there turned out to be  
17       some condition to the transaction that wasn't satisfied?

18              MS. CHEPIGA:   I'd have to check, Your Honor.   But I  
19       think all conditions were satisfied because we did get title on  
20       it.   And Millennium agreed to transfer title to KBC.

21              THE COURT:   So from your perspective, and I don't  
22       know if this is a disputed issue of fact on the case or not,  
23       you take the position that you have succeeded to all of LBF's  
24       rights as owner of this basket of collateral, or securities,  
25       and that you stand in LBF's shoes relative to Millennium at

1 this point. Is that correct?

2 MS. CHEPIGA: We believe -- yes, Your Honor, that's  
3 correct.

4 THE COURT: Okay. So why shouldn't LBF be released  
5 from the case?

6 MS. CHEPIGA: KBC.

7 THE COURT: No, LBF. If LBF -- if you now have  
8 everything that LBF once had, why is LBF a defendant? Is there  
9 a dispute as to your title and ownership?

10 MS. CHEPIGA: Millennium disputes our title. I  
11 believe --

12 MR. WELSH: Your Honor, we have not seen the  
13 transaction documents. That's between KBC and LBF. We have no  
14 idea what they say.

15 THE COURT: Well, that makes two of us. Because I  
16 have no idea what they say either. I'm learning about this for  
17 the first time right now. Okay.

18 Do you agree that this is a litigation which can be  
19 most efficiently managed by going to settlement negotiations  
20 before going into active litigation?

21 MS. CHEPIGA: Yes, Your Honor. And in particular,  
22 the amount in dispute is 37.5 million at maximum and  
23 Millennium's holding 112.5 million and we are most interested  
24 and have been most interested in getting at least the  
25 uncontested portion paid extremely promptly. And then we will

1 exercise in the spirit of creativity discussions as to the  
2 other 37.5 million. But we do want to proceed with this case  
3 and make a motion, if necessary, to force the payment at least  
4 of the uncontested portion to us and of the contested portion,  
5 perhaps, into Court. Because we do not think it's right for  
6 anyone to be bearing the credit risk of a hedge fund while we  
7 have discussions. And we believe there's no reason for  
8 Millennium to continue to hold the money that it is continuing  
9 to hold.

10 THE COURT: Well, I'm not -- are you saying that's  
11 your position and that you may be filing some pleadings at some  
12 point? The question I was really addressing was before  
13 pleadings were filed whether or not you could profitably  
14 continue the discussions that I understand took place last  
15 evening?

16 MS. CHEPIGA: Yes.

17 THE COURT: And that might be continuing into the  
18 future. So you're prepared to do that, correct?

19 MS. CHEPIGA: We are.

20 THE COURT: What would you like to accomplish today  
21 other than adjourning this to another date at which point we  
22 can see if you've made enough progress to get it settled?

23 MR. WELSH: I think that would be sufficient for our  
24 purposes, Your Honor.

25 THE COURT: Here's my suggestion. I looked at the

1 calendar and it's August and I recognize that some people go on  
2 vacation; I have no idea if people in this case are going on  
3 vacation but I think we should give you thirty days to try to  
4 get this done. I don't see any reason to make it longer than  
5 that. It seems, as described, to be a relatively  
6 straightforward dispute. It may include twists and turns that  
7 haven't yet been revealed to me.

8 To the extent that there is information which you can  
9 share with each other, voluntarily without formal discovery  
10 that would facilitate a business understanding, I encourage you  
11 to do that and to do that promptly. And without entering an  
12 order on the subject, would suggest that you identify those key  
13 documents that would be useful for everybody to share in common  
14 to be able to understand what went on and what the rights of  
15 the parties might be including areas that might be in dispute.

16 I don't presume to know if this is a large or a small  
17 universe of documents, but I'm assuming that it's at least an  
18 identified group of documents. Once that's done, presumably,  
19 you can have a meeting confer session with or without a  
20 mediator in an effort to bring it to conclusion. I suggest  
21 that you start without a mediator because a mediator will  
22 simply slow it down and if you can't reach an agreement, well,  
23 maybe then you can consider a mediator. And I would propose  
24 that this put on the -- an adversary docket sometime in the  
25 middle of September and I'm not sure what date that is, but you



1 can check with either my courtroom deputy or counsel for LBHI  
2 who doesn't seem to be involved in this case at all.

3 So those are my suggestions. Does that seem to work  
4 for everybody?

5 MR. WELSH: It works for us, Your Honor.

6 MS. DE ARCY: Your Honor, if I may. It works for us.  
7 I just would like to note that we are working diligently and  
8 have been to obtain information that we can share with the  
9 parties in this case. We are constrained somewhat by the fact  
10 that our client is in Switzerland and some of the documents  
11 actually do not rest with PwC with whom we have to operate  
12 through. We will do everything that we can to work on that  
13 timetable and will do all that we can to expedite things with  
14 our client. But I wanted to make sure that I mentioned that we  
15 have some constraints that may not be present for the other  
16 parties involved.

17 THE COURT: Okay. Well, I assume that KBC -- I  
18 shouldn't assume this, I'll ask, does KBC Financial Products  
19 have within its control documents that are relevant to the  
20 transaction that could be useful to share with others in order  
21 to facilitate a settlement conversation?

22 MS. CHEPIGA: Yes, Your Honor. But I actually think  
23 the real dispute here is actually not with KBC but between  
24 Lehman and Millennium. We're happy to provide what documents  
25 we have, but I'm not sure that those are the critical

1 documents.

2 THE COURT: I don't know that. I mean you may be  
3 absolutely right. I just know that it's a dispute that  
4 involves three parties who are all saying they either want the  
5 deal unwound or they want their money or they want to be  
6 released or something. That's what people are usually saying  
7 in litigation, so. I don't have enough before me to know who  
8 is right. That doesn't mean that what you said wasn't correct.  
9 I just don't know.

10 MR. WELSH: I can just speak briefly to that, Your  
11 Honor. The discussions that have been had recently have  
12 focused on exchanging information with LBF. And it's my  
13 expectation that if we are able to work out an agreement  
14 between Millennium and LBF that KBC would be agnostic, I think,  
15 with respect to the case at that point.

16 THE COURT: Fine. If that's the situation, I think  
17 it makes sense to minimize unnecessary incremental litigation  
18 costs pending the termination by the parties of their ability  
19 to reach an understanding; either you will or you won't. And I  
20 don't think it should take a lot of time to get to that point.  
21 If it proves that it's taking more time to get to that point  
22 because of the difficulty in obtaining necessary documents in a  
23 timely way, I would suggest that rather than having to come  
24 down here, that you adjourn the pretrial perhaps for another  
25 twenty or thirty day period. I don't think this should go out

1 for any cause more than, say, a total of sixty days while  
2 you're trying to work it out. In which case, we'll have a  
3 pretrial that involves more the setting of schedules for motion  
4 practice or discovery or other things that may be required in  
5 order to move the case along.

6 MR. WELSH: Understood, Your Honor.

7 If I could just add one qualification to what I said  
8 earlier about the focus of the discussions being as between  
9 Millennium and LBF, we would very much like to see the  
10 transaction documents for the transaction between LBF and KBC.  
11 We would expect we'd be able to receive copies of those  
12 transaction documents from LBF. But to the extent we can't, I  
13 think we would like to get copies from KBC to the extent  
14 they're available.

15 THE COURT: I was encouraging that very kind of  
16 disclosure but there's nothing formal going on here. This is  
17 just a conversation that we're having about how to move the  
18 thing along and hopefully Price will cooperate in the spirit of  
19 trying to reach a consensual resolution.

20 MR. WELSH: Understood, thank you, Your Honor.

21 THE COURT: Okay. Is there more for this?

22 MR. WELSH: One. Just one collateral issue focused  
23 solely on Millennium. Your Honor, we have not filed our  
24 corporate ownership statement for millennium. We're certainly  
25 prepared and want to do that, but the issue that has come up in

1 the course of preparing it is that reading Rule 7007.1 of  
2 reference to classes of securities, because the Millennium  
3 International Limited is a fund, there are numerous, numerous  
4 classes of investor securities. And if you look at -- if you  
5 look at the ownership on a class-by-class basis, you trip the  
6 ten percent threshold a lot over the course of the pool of  
7 owners. And we're prepared to disclose all of those parties.  
8 However, because of confidentiality concerns as between  
9 Millennium and its investors, we would request, Your Honor,  
10 respectfully, that we'd be able to file it under seal or file  
11 it in a way that it's not publicly disclosed if Your Honor is  
12 agreeable.

13 THE COURT: If you want to file a motion for sealing,  
14 I'll certainly consider it. It seems to me that this is one of  
15 those things that may make it that much more desirable for you  
16 to reach a settlement so you don't have to deal with all this  
17 and I would suggest that that be deferred until after you reach  
18 your settlement, and hopefully you will. And if you can't  
19 reach a settlement, I'm not so sure I'm going to seal it.

20 MR. WELSH: Understood.

21 THE COURT: I'm going to make your life as difficult  
22 as possible if you can't settle.

23 MR. WELSH: That's understood.

24 THE COURT: Fine. Okay.

25 MR. WELSH: Thank you, Your Honor.

1 THE COURT: Fine. Then we all understand each other.  
2 We're adjourned until next time.

3 MR. WELSH: Thank you.

4 THE COURT: Thanks.

5 (Proceedings concluded at 2:38 PM)

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C E R T I F I C A T I O N

I, Ellen S. Kolman, certify that the foregoing transcript is a  
true and accurate record of the proceedings.

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Ellen S. Kolman

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Date: August 6, 2009